

§ 240.17g-6

structure, assets, liabilities, or activities of the obligor or issuer of the security;

(6) The nationally recognized statistical rating organization issues or maintains a credit rating where the fee paid for the rating was negotiated, discussed, or arranged by a person within the nationally recognized statistical rating organization who has responsibility for participating in determining credit ratings or for developing or approving procedures or methodologies used for determining credit ratings, including qualitative and quantitative models; or

(7) The nationally recognized statistical rating organization issues or maintains a credit rating where a credit analyst who participated in determining or monitoring the credit rating, or a person responsible for approving the credit rating received gifts, including entertainment, from the obligor being rated, or from the issuer, underwriter, or sponsor of the securities being rated, other than items provided in the context of normal business activities such as meetings that have an aggregate value of no more than \$25.

(d) For the purposes of this section, the term *person within a nationally recognized statistical rating organization* means a nationally recognized statistical rating organization, its credit rating affiliates identified on Form NRSRO, and any partner, officer, director, branch manager, and employee of the nationally recognized statistical rating organization or its credit rating affiliates (or any person occupying a similar status or performing similar functions).

(e) *Certification.* In order to access a password-protected Internet Web site described in paragraph (a)(3) of this section, a nationally recognized statistical rating organization must furnish to the Commission, for each calendar year for which it is requesting a password, the following certification, signed by a person duly authorized by the certifying entity:

The undersigned hereby certifies that it will access the Internet Web sites described in 17 CFR 240.17g-5(a)(3) solely for the purpose of determining or monitoring credit ratings. Further, the undersigned certifies that it will keep the information it accesses

17 CFR Ch. II (4-1-14 Edition)

pursuant to 17 CFR 240.17g-5(a)(3) confidential and treat it as material nonpublic information subject to its written policies and procedures established, maintained, and enforced pursuant to section 15E(g)(1) of the Act (15 U.S.C. 78o-7(g)(1)) and 17 CFR 240.17g-4. Further, the undersigned certifies that it will determine and maintain credit ratings for at least 10% of the issued securities and money market instruments for which it accesses information pursuant to 17 CFR 240.17g-5(a)(3)(iii), if it accesses such information for 10 or more issued securities or money market instruments in the calendar year covered by the certification. Further, the undersigned certifies one of the following as applicable: (1) In the most recent calendar year during which it accessed information pursuant to 17 CFR 240.17g-5(a)(3), the undersigned accessed information for [Insert Number] issued securities and money market instruments through Internet Web sites described in 17 CFR 240.17g-5(a)(3) and determined and maintained credit ratings for [Insert Number] of such securities and money market instruments; or (2) The undersigned previously has not accessed information pursuant to 17 CFR 240.17g-5(a)(3) 10 or more times during the most recently ended calendar year.

[72 FR 33620, June 18, 2007, as amended at 74 FR 6482, Feb. 9, 2009; 74 FR 63864, Dec. 4, 2009]

§ 240.17g-6 Prohibited acts and practices.

(a) *Prohibitions.* A nationally recognized statistical rating organization is prohibited from engaging in any of the following unfair, coercive, or abusive practices:

(1) Conditioning or threatening to condition the issuance of a credit rating on the purchase by an obligor or issuer, or an affiliate of the obligor or issuer, of any other services or products, including pre-credit rating assessment products, of the nationally recognized statistical rating organization or any person associated with the nationally recognized statistical rating organization.

(2) Issuing, or offering or threatening to issue, a credit rating that is not determined in accordance with the nationally recognized statistical rating organization's established procedures and methodologies for determining credit ratings, based on whether the rated person, or an affiliate of the rated person, purchases or will purchase the credit rating or any other service or product of the nationally

Securities and Exchange Commission

§ 240.17h-1T

recognized statistical rating organization or any person associated with the nationally recognized statistical rating organization.

(3) Modifying, or offering or threatening to modify, a credit rating in a manner that is contrary to the nationally recognized statistical rating organization's established procedures and methodologies for modifying credit ratings based on whether the rated person, or an affiliate of the rated person, purchases or will purchase the credit rating or any other service or product of the nationally recognized statistical rating organization or any person associated with the nationally recognized statistical rating organization.

(4) Issuing or threatening to issue a lower credit rating, lowering or threatening to lower an existing credit rating, refusing to issue a credit rating, or withdrawing or threatening to withdraw a credit rating, with respect to securities or money market instruments issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction, unless all or a portion of the assets within such pool or part of such transaction also are rated by the nationally recognized statistical rating organization, where such practice is engaged in by the nationally recognized statistical rating organization for an anticompetitive purpose.

§ 240.17g-7 Report of representations and warranties.

Each nationally recognized statistical rating organization shall include in any report accompanying a credit rating with respect to an asset-backed security (as that term is defined in Section 3(a)(77) of the Securities Exchange Act of 1934) a description of—

(a) The representations, warranties and enforcement mechanisms available to investors; and

(b) How they differ from the representations, warranties and enforcement mechanisms in issuances of similar securities.

NOTE TO § 240.17g-7: For the purposes of this requirement, a “credit rating” includes any expected or preliminary credit rating issued by a nationally recognized statistical rating organization.

[76 FR 4515, Jan. 26, 2011]

§ 240.17h-1T Risk assessment record-keeping requirements for associated persons of brokers and dealers.

(a) *Requirement to maintain and preserve information.* (1) Every broker or dealer registered with the Commission pursuant to section 15 of the Act, and every municipal securities dealer registered pursuant to Section 15B of the Act for which the Commission is the appropriate regulatory agency, unless exempt pursuant to paragraph (d) of this section, shall maintain and preserve the following information:

(i) An organizational chart which includes the broker or dealer and all its associated persons. Included in the organizational chart shall be a designation of which associated persons are Material Associated Persons as that term is used in paragraph (a)(2) of this section;

(ii) Written policies, procedures, or systems concerning the broker or dealer's:

(A) Method(s) for monitoring and controlling financial and operational risks to it resulting from the activities of any of its associated persons, other than a natural person;

(B) Financing and capital adequacy, including information regarding sources of funding, together with a narrative discussion by management of the liquidity of the material assets, the structure of debt capital, and sources of alternative funding; and

(C) Trading positions and risks, such as records regarding reporting responsibilities for trading activities, policies relating to restrictions or limitations on trading securities and financial instruments or products, and a description of the types of reviews conducted to monitor existing positions, and limitations or restrictions on trading activities.

(iii) A description of all material pending legal or arbitration proceedings involving a Material Associated Person or the broker or dealer that are required to be disclosed by the ultimate holding company under generally accepted accounting principles on a consolidated basis;

(iv) Consolidated and consolidating balance sheets, prepared in accordance with generally accepted accounting